STATE OF MINNESOTA
IN COURT OF APPEALS
A10-624

State of Minnesota,
Respondent,

vs.

William Ike Libby, Jr.,
Appellant.

Filed March 8, 2011
Affirmed
Hudson, Judge

Becker County District Court
File No. 03-CR-08-3413

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael D. Fritz, Becker County Attorney, Gretchen D. Thilmony, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Toussaint, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

Appellant challenges his conviction of second-degree controlled substance crime, arguing that the district court erred in failing to suppress methamphetamine that was

discovered during an unlawful search of appellant's vehicle. Because the inevitable-discovery exception to the exclusionary rule applies, we affirm.

FACTS

At 7:45 p.m. on November 17, 2008, Officer Tammy Hunt of the Detroit Lakes Police Department received a report that appellant William Libby, who had active arrest warrants for unlawful possession of a firearm, was driving a blue Buick near a local store. Officer Hunt drove to the store but was unable to locate Libby or the blue Buick. Later that evening, around 10:30 p.m., Officer Hunt saw a blue Buick driving toward her. Officer Hunt followed the vehicle, determined that the vehicle was registered to a woman, and confirmed that its license plate number was almost exactly the same as the one for the vehicle that Libby was reported to be driving. Officer Hunt could see one person in the vehicle, but she could not ascertain whether it was a man or a woman.

The vehicle turned into a residential driveway, and Officer Hunt followed. The driver and Officer Hunt exited their vehicles. Officer Hunt approached the driver and asked him a number of questions, including his name. The driver responded that his name was Christopher Villebrun, but Officer Hunt was 90 percent certain that the driver was Libby.

After answering several questions from Officer Hunt, the driver's demeanor changed, and he became confrontational. He asked Officer Hunt why she was harassing him, and she denied doing so. The driver started running away, and Officer Hunt attempted to stop him, but she was unable to do so. By this point, Officer Hunt was

almost positive that the driver was Libby, and she later confirmed her suspicions after viewing a photograph of Libby at the sheriff's office.

Five or six additional units arrived, set up a perimeter, and searched for Libby. During this search, Officer Hunt and another officer checked the vehicle for keys, but they could not find any and determined that Libby likely still had them. The other officer opened the hood of the vehicle and disconnected several wires so that no one could return and leave with the vehicle.

Officer Hunt quickly searched the interior of the vehicle and seized a folding knife, a blue zippered bag, a cellular telephone, and a set of brass knuckles. Officer Hunt opened the blue zippered bag, noticed some metal objects, and decided to confiscate the bag because she did not know what the objects were. Officer Hunt testified that this cursory search was for the purpose of officer safety because she did not know where Libby was. But Officer Hunt further testified that at this time, "[she] knew the vehicle was going to be impounded" and an inventory search conducted. Officer Hunt also testified that officers occasionally conduct inventory searches at the scene, but in this case, she opted not to do so because of safety concerns and the cold temperature.

The search for Libby was eventually called off, and Officer Hunt called for a tow truck to take the vehicle to the police garage. Officer Hunt impounded the vehicle because: (1) there had been no contact with the registered owner of the vehicle; (2) the vehicle may have been stolen; (3) no one was home at the residence where the vehicle was parked; and (4) Libby was not a resident of that home. After Officer Hunt called for the tow truck, an individual who was related to a resident of the house arrived and helped

Officer Hunt contact the resident, who told Officer Hunt that she did not know anyone named "Billy."

As Officer Hunt followed the tow truck to the police garage, she "unzipped the blue bag to look in there further . . . [and] saw the plastic baggies with [a] white powdery substance in them," which later tested positive for methamphetamine. At the police garage, Officer Hunt conducted an inventory search of Libby's vehicle. Libby does not dispute that Officer Hunt impounded the vehicle and conducted the inventory search pursuant to standard police procedure.

Libby was charged with first-degree controlled substance crime in violation of Minn. Stat. § 152.021, subd. 1(1) (2008). Libby moved to suppress the methamphetamine found as a result of Officer Hunt's search of his vehicle. The state argued that the methamphetamine was admissible as the fruit of a lawful search incident to arrest, a lawful automobile search for weapons, or a lawful inventory search, or alternatively, that it was admissible under the inevitable-discovery exception to the exclusionary rule.

The district court denied Libby's motion to suppress. The district court did not address the state's argument that the search was a valid search incident to arrest, but the district court rejected the state's argument that the search was permitted under the automobile exception based on its finding that when the search was performed, the vehicle was secure and Libby was not in immediate control of or in proximity to the vehicle. The district court did not squarely address whether the search was a lawful inventory search, but the district court reasoned that because "the evidence seized would

have inevitably been discovered by lawful means during the inventory search of the vehicle," it was admissible.

The district court held a trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, and determined that Libby was guilty of the amended charge of second-degree controlled substance crime in violation of Minn. Stat. § 152.022, subd. 1(1) (2008). The district court imposed a sentence of 108 months. Libby appeals.

D E C I S I O N

On review of a pretrial order denying a motion to suppress evidence, "[this court] review[s] the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Buckingham*, 772 N.W.2d 64, 70 (Minn. 2009) (quotation omitted). When the facts are not in dispute, this court reviews the facts independently and determines whether the evidence must be suppressed as a matter of law. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). Because the facts are undisputed, the only question is whether the district court erred in determining that the methamphetamine inevitably would have been discovered during a lawful inventory search of the vehicle.

Both the United States and Minnesota constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are presumptively unreasonable unless the search is authorized under one of the well-established exceptions to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967); *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). But even if evidence would otherwise be excluded as the fruit of an unreasonable search,

it is admissible if the state can prove by a preponderance of the evidence that the police inevitably would have discovered the evidence using lawful means. *Nix v. Williams*, 467 U.S. 431, 443–44, 104 S. Ct. 2501, 2508–09 (1984); *State v. Harris*, 590 N.W.2d 90, 105 (Minn. 1999).

Inventory searches are a well-established exception to the warrant requirement. *S. Dakota v. Opperman*, 428 U.S. 364, 369–71, 96 S. Ct. 3092, 3097–98 (1976); *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). They are lawful so long as the vehicle has been impounded and inventoried pursuant to standard police procedure. *Opperman*, 428 U.S. at 369–71, 96 S. Ct. at 3097–98; *Gauster*, 752 N.W.2d at 502. Here, the district court concluded that, because the police would have discovered the methamphetamine during a lawful inventory search, it was admissible under the inevitable-discovery exception to the exclusionary rule.

We agree, based on our decision in *State v. Volkman*. 675 N.W.2d 337, 342 (Minn. App. 2004). In *Volkman*, an officer was investigating a driver who was passed out in a truck parked along the road. *Id.* at 339–40. Another officer performed an unlawful search of the vehicle and discovered "a white powder wrapped in a coffee filter, inside a leather pouch, hidden in a toolbox," which was later determined to be a controlled substance. *Id.* at 340. The officer subsequently decided to impound the vehicle. *Id.* The district court suppressed the drug evidence, concluding that the inevitable-discovery exception did not apply. *Id.*

We reversed and remanded, concluding that the record indicated that the vehicle was inevitably going to be impounded. *Id.* at 343. Because "[t]he critical factor in

approving an inventory search is whether the search was carried out in accordance with the standard procedure of the law enforcement agency," we remanded for the district court to make findings as to whether the officer had followed standard police procedure in impounding and inventorying the vehicle. *Id.* at 342–43. But we indicated that if the district court made such findings on remand, the drug evidence would be admissible under the inevitable-discovery exception. *See id.*

Libby does not dispute that Officer Hunt was permitted to impound Libby's vehicle. Minn. Stat. § 168B.04, subd. 2(b)(2)(i) (2008) authorizes the immediate impoundment of a vehicle that has been left unattended on private, residential, single-family property. Consequently, the district court determined that impoundment was appropriate because "[t]he vehicle driven by [Libby] in this matter was left unattended in the private driveway of a single-family dwelling that was not his home [and] [t]he owner of the vehicle was not present, nor was anyone else present to take custody of the vehicle."

Libby also does not dispute that his vehicle was properly impounded and searched in accordance with standard police procedure. But he nonetheless contends that the inevitable-discovery exception does not apply based on *State v. Hatton*, 389 N.W.2d 229 (Minn. App. 1986). In *Hatton*, the police discovered material evidence in the course of a warrantless search of a suspect's motel room. *Id.* at 232. The state argued that, because the police officers could have obtained a search warrant, the challenged evidence inevitably would have been discovered. *Id.* at 234. We rejected the state's argument, concluding that the inevitable-discovery exception did not apply when officers

discovered evidence at a time when they could have been pursuing—but were not in fact pursuing—a warrant. *Id.* We reasoned that otherwise, "the 'inevitable discovery' rule would render the Fourth Amendment protection meaningless [because a] prosecutor would usually be able to show, through hindsight, that a warrant would have been issued and the evidence would have eventually been discovered." *Id.*

But the situation here is distinguishable. At the time of the unlawful search in *Hatton*, the officers had no authority to execute the warrant that would have authorized the search. *See id.*; *State v. Lohnes*, 344 N.W.2d 605, 610 (Minn. 1984) (stating that warrant requirement guarantees that police may not conduct a search "without first having convinced an impartial magistrate that probable cause exists that the person has committed a crime and that other reasons exist justifying the intrusion"). In contrast, at the time she conducted the unlawful search at issue here, Officer Hunt not only had the authority to impound Libby's vehicle and perform an inventory search, but she also testified that she "knew the vehicle was going to be impounded" and an inventory search conducted. *See Opperman*, 428 U.S. at 369–71, 96 S. Ct. at 3097–98 (stating that inventory searches are an exception to the warrant requirement and can be conducted by police so long as the car is impounded and searched in accordance with police procedure); *Gauster*, 752 N.W.2d at 502 (same). Under these circumstances, we conclude that because Officer Hunt was authorized to impound and inventory Libby's vehicle, the inevitable-discovery exception applies, and the methamphetamine was therefore admissible.

Affirmed.